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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,131	07/14/2003	Shane E. Weyant	DB001016-001	6900
23990	7590	11/01/2006	EXAMINER	
DOCKET CLERK				MAYO, TARA L
P.O. DRAWER 800889				PAPER NUMBER
DALLAS, TX 75380				3671

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/619,131	WEYANT ET AL.
	Examiner Tara L. Mayo	Art Unit 3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 20 October 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,5,6 and 28-32 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,5,6 and 28-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 01 July 2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    - a) All    b) Some \* c) None of:
      1. Certified copies of the priority documents have been received.
      2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
      3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 20 October 2006 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claim 5 is indefinite because it is dependent upon a canceled claim. For the purpose of prosecution on the merits, the Examiner has considered the claim dependent upon claim 1.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3671

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 28 through 30 are rejected under 35 U.S.C. 102(b) as being anticipated by

Altenburg et al. (U.S. Patent No. 6,092,473 A).

Altenburg et al. '473, as best seen in Figure 4, show a wale and retaining system comprising:

with regard to claim 28,

a wale of unitary construction;

a back wall having a first opening therein and operable for receiving a tieback rod therethrough;

a front wall having a channel formed therein extending from a first end of the wale to the a second end of the wale and having a second opening therein and operable for receiving the tieback rod therethrough;

a plurality of connecting walls connecting said back and front walls to form at least one chamber between said back wall and said front wall;

a tieback rod extending through the first opening, the at least one chamber and the second opening; and

a fastener coupled to said tieback rod and disposed within the channel;

with regard to claim 29,

wherein said channel has a depth sufficient such that when said wale is secured to a retaining wall by the tieback rod and the fastener, said tieback rod and said fastener do not protrude from the channel; and

Art Unit: 3671

with regard to claim 30,

wherein said plurality of connecting walls includes a top wall, an upper reinforcing wall, a lower reinforcing wall and a bottom wall; and

wherein a plurality of chambers is formed between said back wall and said front wall.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 5, 6, 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altenburg et al. (U.S. Patent No. 6,092,473 A) in view of *Enduro Systems DuroThread Fastener & Hanging Systems*.

With regard to claims 1 and 6, see the application of Altenburg et al. '473 to claims 28 through 30 as set forth above in section 5.

Altenburg et al. '473 disclose all of the features of the claimed invention with the exception(s) of:

with regard to claims 1, 6 and 31,

the wale further comprising a composite material; and

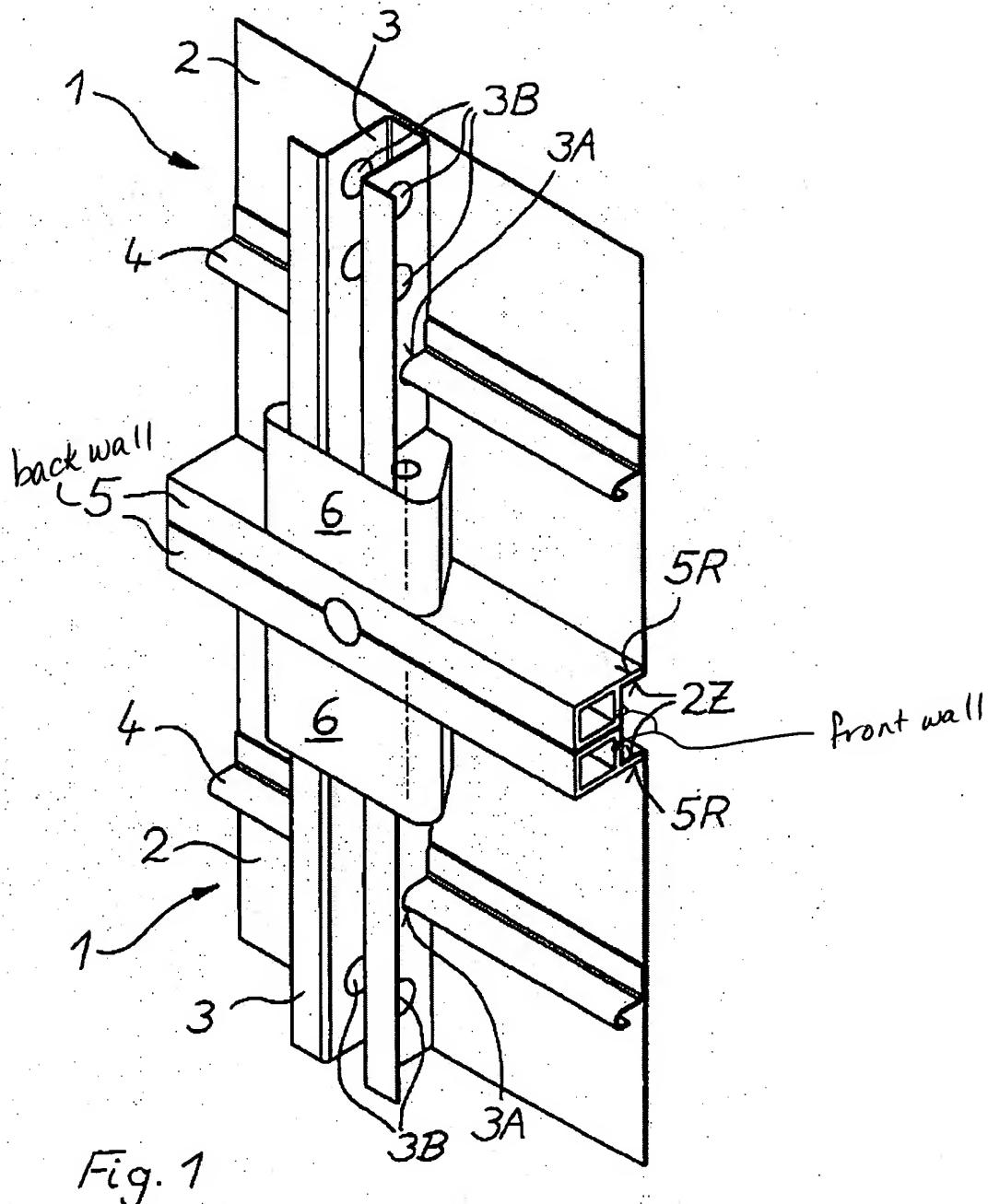
with regard to claims 5 and 32,

the composite material being fiberglass reinforced plastic resin impregnated composite.

*Enduro Systems* shows a fastener system comprising a tieback rod and a clamp, the fastener system comprising a fiberglass reinforced plastic resin impregnated composite for applications requiring corrosion resistant and/or non-conductive fasteners.

With regard to claims 1, 5, 6, 31 and 32, it would have been obvious to one having ordinary skill in the art of retaining walls at the time the invention was made to modify the device shown by Altenburg et al. '473 such that the wale would comprise a fiberglass reinforced plastic resin impregnated composite as suggested by *Enduro Systems*. The motivation would have been to effect a corrosion resistant and non-conductive wale structure.

With specific regard to claims 1, 6 and 31, the method of forming the device (i.e., by pultrusion) is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.



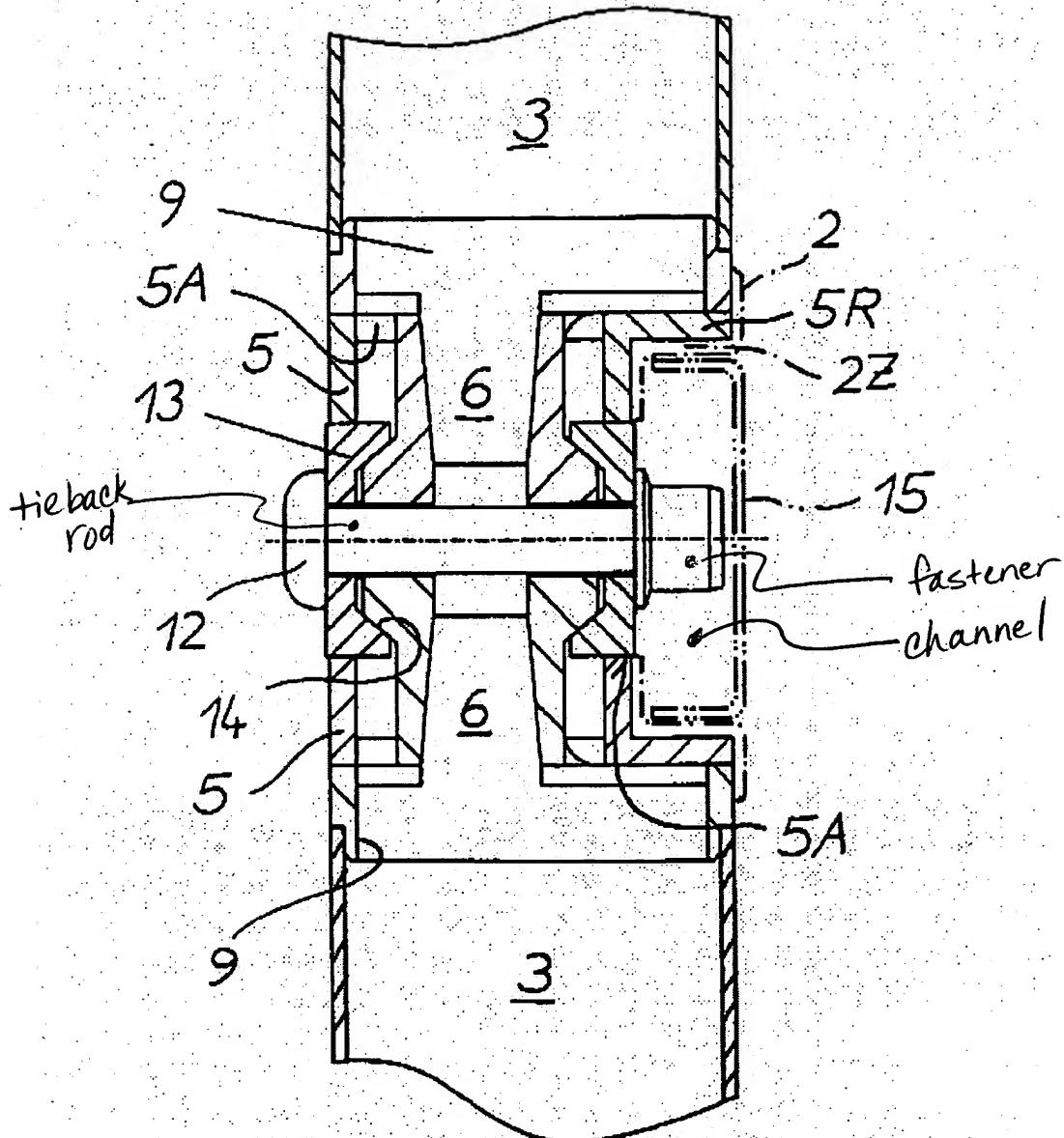


Fig. 4

***Response to Arguments***

9. Applicant's arguments filed 20 October 2006 have been fully considered but they are not persuasive.

In response to Applicant's statements regarding the claimed limitation of "unitary construction," Applicant is directed to the Response to Arguments set forth in the Final Rejection mailed 11 January 2006.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3671

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

tlm  
28 October 2006



TARA L MAYO  
PATENT EXAMINER